

MAINE STATE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
October 14, 2015

Room 208  
Burton Cross Building  
Capitol Street, Augusta, Maine

Commission Members Present: Barbara Dresser, Chair, Gary Reed, William McFarland and Dirk Duncan.

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier and Miles Greenleaf.  
Department Staff Present: Mari Wells Eager.

**1. Call the Meeting to Order and Introductions:** Barbara Dresser, Chair.

**2. Review and Approval of Written Decisions and Orders**

Commissioner Dresser asked for a motion to approve the decision and orders.

Commissioner McFarland made a motion to approve the decision and order as written dated October 14, 2015 for Robert McNeil complaint number 2015 MSHRC 040.

Commissioner Duncan seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the decision and order as written dated October 14, 2015 for Shawn Nye complaint number 2015 MSHRC 038.

Commissioner Duncan seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the decision and order dated as written dated October 14, 2015 for Michael Cayouette complaint number 2015 MSHRC 037. Commissioner Duncan seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the decision and order dated October 14, 2015 as written for Shawn Thayer complaint numbers 2015 MSHRC 07, 010, 011, 013 and 015. Commissioner Duncan seconded. Vote 4-0.

Commissioner McFarland made a motion to approve as written the decision and order dated October 14, 2015 for Kim Ireland complaint number 2015 MSHRC 066.

Commissioner Duncan seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the decision and order as written dated October 14, 2015 for Marissa Tyler complaint number 2015 MSHRC 039.

Commissioner Duncan seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the decision and order as written dated October 14, 2015 for Steven Vafiades complaint number 2015 MSHRC 012.

Commissioner Duncan seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the decision and order as written dated October 14, 2015 for Robert Lamarre complaint number 2015 MSHRC 035 and 036. Commissioner Duncan seconded. Vote 4-0.

**3. Adjudicatory Hearings:**

- a. RE: Randy Bickmore et al.,** Motion to Dismiss the Consolidated Cobalt Cases. Commissioner Dresser handed the meeting over to the hearing officer. AAG, Guay stated that you will be hearing legal arguments that there is a flaw in the process. He stated that the lawyers have the burden for the motion. AAG, Guay asked questions of the Commissioners to qualify them. Commissioner Duncan stated that Mr. Campbell drives his horse. AAG, Guay asked Commissioner

Duncan if he can be fair and impartial. Commissioner Duncan responded yes he can. AAG, Guay asked if any of the parties based on that disclosure would have an issue with you serving then they would raise that in a form of an objection. AAG, Guay asked counsel who would like to go first. Mr. Rancourt stated that he would go first. He wanted to discuss the requirements of the chain of custody of these tests. He thinks the test should be upheld. He, on behalf of Mr. Steven Vafiades, made document request in July and August that they be provided with all documents relating to the Cobalt testing. Mr. Rancourt doesn't know if Mr. Sams has followed the protocol and for that reason Mr. Rancourt doesn't think they can go forward because the integrity of these tests cannot be verified and on that point he ask that this matter be dismissed. Ms. Engall representing Patricia Switzer was asked to discuss the notice requirement that was not met here. She stated that any cases prior to April 25, 2015 should be dismissed for Cobalt. Ms. Engall stated that the notice argument should be dismissed. Mr. Childs representing Mr. W. Drew Campbell and Mr. Randy Bickmore stated that this is a legal argument that these proceedings are not grounded in law and should not go forward. This pertains to cases before April 28, 2015. Mr. Childs stated that Ohio State University is doing a Cobalt study right now. We're going to get to the bottom of whether it is performance enhancing or not. We just don't know yet. AAG, Mark Randlett representing the Department stated that he would address just a few things that were raised by counsel in their statements. The purpose of your rules is to protect the integrity of the public and protect the health of the horse. Refer to Chapter 1, Section 66. Do you need to determine whether or not Cobalt affects the performance of the horse? AAG, Randlett says no you do not. Refer to Chapter 11, Section 4, Subsection 4.2C. Under Chapter 11, Section 10, that deals with penalty levels. What level do we schedule these violations in determining the penalty. That is up to the Commission to decide. AAG, Guay turned the hearing over to the chair for discussion on whether or not to dismiss the cases. After a brief discussion, Commissioner McFarland made a motion that this Commission do not dismiss the current request that is before them based on the facts as presented by the two legal counsels. Commissioner Duncan seconded. Vote 4-0.

**RE: Stephen Murchison**

AAG, Guay stated that there is a motion for an extension of time and reconsideration of a new trial for Stephen Murchison. David Bobrow represented Mr. Murchison. Mr. Murchison was present. Mr. Bobrow made a brief argument to the Commission. Ms. Wells stated that this is a procedural motion about whether or not you should not follow your own rules. Refer to Chapter 19, Section 5. Mr. Murchison filed a motion to reconsider well beyond the ten days after the Commission's decision. Ms. Wells recommended to the Commission to deny the motion. AAG, Guay turned it over to the Chair. After deliberations, Commissioner Reed made a motion that the request for extension of time and reconsideration of a new trial be denied. Commissioner McFarland seconded. Vote 3-1. (Commissioner Duncan opposed).

- b. RE: Marc Reynolds, Complaint Number 2015 MSHRC 069.** Four horses owned by Mr. Reynolds were found to carry clenbuterol, a prohibited substance, in their bodies, when tested following five different races at the Bangor Raceway during May of 2015. The trainer of record for the horses, Shawn Thayer,

acknowledged violating the trainer responsibility requirements contained in CMR 01-017, Chapter 11. Mr. Reynolds was present and represented himself. AAG, Guay as hearing officer qualified the Commissioners. Ms. Wells represented the Department. AAG, Guay stated that we will go to the penalty phase because Mr. Reynolds stipulated to the violation. Mr. Reynolds presented Exhibit 1, Uniform Saddle Cloth at Hollywood Casino document; Exhibit 2, MSHRC withdrawal guidelines (3 pages); Exhibit 3, Track it for Trainer's (2 pages) and Exhibit 4, Dr. Sams email to Mr. Jennings. There were no objections to any of the exhibits. AAG, Guay admitted the exhibits. Ms. Wells presented Exhibit 1, Notice of Hearing and Corrected Notice of Hearing and Exhibit 2, Mr. Reynolds application. AAG, Guay admitted these two exhibits without objection. He gave Mr. Reynolds his oath. Mr. Reynolds presented argument. Ms. Wells stated that this should have been treated as one offense. AAG, Guay closed the hearing. Commissioner Dresser asked if anyone had any thoughts. After a brief discussion, Commissioner Duncan made a motion to treat this as one positive for the owner and return of the purse "In The Name of James" in the amount of \$750.00 based on five being treated as one. Commissioner McFarland seconded. Vote 3-1. (Commissioner Dresser opposed).

- c. **RE: Robert Lamarre, Complaint Number 2015 MSHRC 062.** Mr. Lamarre is alleged to have violated MSHRC Rules Chapters 7 and 11. Mr. Lamarre is the trainer of record for the horse "Juniata County". A blood sample obtained from Juniata County following the Fourth Race at Scarborough Downs on July 19, 2015 disclosed the presence of Diclofenac. Mr. Lamarre was present. AAG, Guay qualified the Commissioners. He asked Mr. Lamarre if he stipulated to being the owner of the horse Juniata County and that he was the trainer of record. Mr. Lamarre stated yes and he stipulated to the violation. Ms. Wells presented the following exhibits and AAG, Guay read them into the record: Exhibit 1, Notice of Hearing; Exhibit 2, License Application; Exhibit 3, Race Program; Exhibit 4, Sample Tag; Exhibit 5, Sample Shipment Record; Exhibit 6, Certificate of Analysis and Exhibit 7, Notice of Positive Test. These exhibits were entered without objection. AAG, Guay gave Mr. Lamarre his oath. Mr. Lamarre testified. AAG, Guay closed this part of the hearing. Commissioners deliberated. Commissioner Dresser asked for a motion. Commissioner Reed made a motion that a violation has occurred and that a fine of \$1000 with all but \$500 be suspended, a 15 day suspension with all but 5 days suspended and loss of purse to the owner. Commissioner McFarland seconded. Vote 4-0.
- d. **RE: Elmer Ballard, Complaint Number 2015 MSHRC 067.** Mr. Ballard is alleged to have violated MSHRC Rules Chapters 7 and 11. Mr. Ballard is the trainer of record for the horse, "Wantsomeofthis". A blood sample obtained from Wantsomeofthis following the Eleventh Race at Skowhegan State Fair on August 16, 2015, disclosed the presence of Phenylbutazone. Mr. Ballard was present. AAG, Guay opened the hearing. He qualified the Commissioners. AAG, Guay stated that Mr. Ballard stipulated to the trainer of the horse. Mr. Ballard did not admit to the violation. Ms. Wells presented the following exhibits: Exhibit 1, Notice of Hearing; Exhibit 2, License application; Exhibit 3, Race Program; Exhibit 4, Sample Test; Exhibit 5, Sample Shipment List; Exhibit 6, Certificate of Analysis and Exhibit 7, Notice of Positive Test. AAG, Guay admitted the seven exhibits without objection by the licensee. He also stated that there will be two hearings. One for the evidence as to the violation and if the Commission finds a

violation then the second hearing will be for the penalty. Ms. Wells stated that the State will rely on the exhibits. AAG, Guay gave Mr. Ballard his oath. Mr. Ballard testified. Ms. Wells had no witnesses. AAG, Guay closed the hearing. Commissioner Dresser asked for a motion. Commissioner Reed made a motion to a violation of the trainer responsibility rule. Commissioner McFarland seconded. Vote 4-0.

AAG, Guay opened up the hearing. He stated to Mr. Ballard that he can testify to the mitigating factors. Mr. Ballard testified. Ms. Wells recommended Chapter 17 Category C, 1<sup>st</sup> offense as a written warning. AAG, Guay closed the hearing. Commissioners deliberated. Commissioner Reed made a motion that a violation has occurred and the penalty of a written warning to Mr. Ballard and a written warning to the two owners. Commissioner McFarland seconded. Vote 4-0.

- e. **RE: Timothy Nehila, Complaint Number 2015 MSHRC 068.** Mr. Nehila is alleged to have violated MSHRC Rules Chapters 7 and 11. Mr. Nehila is the trainer of record for the horse, "Wantasmile." A blood sample from Wantasmile following the Third Race at the Skowhegan State Fair on August 21, 2015, disclosed the presence of Firocoxib. Mr. Nehila was present. AAG, Guay qualified the Commissioners. He asked Mr. Nehila if he stipulated to the trainer of record and that the horse had Firocoxib in its system. Mr. Nehila stated yes and admitted to the violation. Ms. Wells presented the following exhibits; Exhibit 1, Notice of Hearing; Exhibit 2, License Application; Exhibit 3, Race Program; Exhibit 5, Sample Shipment Record; Exhibit 6, Certificate of Analysis and Exhibit 7, Notice of Positive Test. AAG, Guay admitted these exhibits without objection from the licensee. He also gave Mr. Nehila his oath. Mr. Nehila testified. Ms. Wells stated that this is a Category B penalty in Chapter 17 and recommends a 1<sup>st</sup> offense with less than 15 days and less than \$500 absent mitigating circumstances and the return of the purse. AAG, Guay closed the hearing. Commissioners deliberated. Ms. Wells stated that she had an older version of the rule and that it should be a Category C penalty in Chapter 17 not Category B. Commissioner McFarland made a motion that the trainer be assessed \$500 with all but \$50 suspended absent mitigating circumstances and the return of purse for the owner. Commissioner Duncan seconded. Vote 4-0.

### 3. Appeals of Presiding Judge Decisions:

- a. **Appeal from Ronald Cushing Concerning Complaint Number 2015 MSHRC 070.**  
Mr. Cushing is appealing the August 25, 2015 decision of Presiding Judge Frank Hall, Jr. in which Judge Hall assessed a \$400 fine for a fourth offense of MSHRC Rule prohibiting excessive or indiscriminate use of the whip. This item was continued.
- b. **Appeal from Charles Eaton, III Concerning Complaint Number 2015 MSHRC 071**  
Mr. Eaton is appealing an August 22, 2015, decision by Presiding Judge Peter Tommila, in which Judge Tommila allowed the horse, "Leap of Faith" to race with hobbles even though the horse had been drawn in and recorded in the program as racing free legged. Charles Eaton was present. AAG, Guay qualified the Commissioners. Ms. Wells stated that this appeal should not be allowed. She

read Chapter 7, Section 9 Hopples and Chapter 19, Section 2 Protest. AAG, Guay gave Mr. Eaton his oath. Mr. Eaton stated that his horse did nothing wrong until the word “go” was given. It was known before the race that the horse was in the wrong. There was no opportunity to file a protest because there wasn’t enough time before the race. AAG, Guay gave Mr. Malia his oath. Mr. Malia testified. AAG, Guay stated that the Commission needs to decide if this appeal should go forward. Ms. Wells stated that the department withdraws their motion. The following exhibits were entered. Exhibit 1, Notice of Hearing to Mr. Eaton and Mr. Fisher; Exhibit 2, License Application for Mr. Eaton and Mr. Fisher; Exhibit 3, Race Program; Exhibit 4, Race Grievance; Exhibit 5, Appeal Form and Exhibit 6, Declaration Page. AAG, Guay admitted these exhibits without objection from the licensee. Ms. Wells stated that this case deals with Chapter 7, Section 9 Hopples. AAG, Guay gave the oath to Mr. Robinson. Mr. Robinson testified. Mr. Malia stated that this has to do with eligibility. AAG, Guay closed the hearing. Commissioners deliberated. Commissioner Dresser asked if there was a violation. Commissioner Duncan, Commissioner McFarland and Commissioner Reed all agreed that there was no violation. Commissioner Duncan made a motion to not grant the appeal. Commissioner McFarland seconded. Vote 3-1 (Commissioner Dresser opposed).

**c. Appeal from Kim Ireland Concerning Complaint Number 2015 MSHRC 074**

Mr. Ireland is appealing a September 27, 2015 decision by Presiding Judge Charles Malia for not imposing any sanctions upon the horse “Apollon Chariot” for allegedly being inside the pylons and, in so doing, gaining an unfair advantage. Mr. Ireland was present. AAG, Guay asked a few questions to Judge Malia regarding the race. It was decided that the race was worth viewing. The Commissioners took a straw poll and agreed with AAG, Guay. AAG, Guay qualified the Commissioners. Mr. Ireland presented Exhibit 1, Video of Tape (Joint Exhibit); Exhibit 2, Race Chart (Joint Exhibit). Ms. Wells presented the following exhibits: Exhibit 1, Notice of Hearing for Kim Ireland, Ronald Cushing and Joseph Trice; Exhibit 2, License applications for Mr. Ireland, Mr. Cushing and Mr. Trice; Exhibit 3, Race Program; Exhibit 4, Appeal Form; Exhibit 5, Judges Race Chart and Exhibit 6, Judges’ Report. AAG, Guay admitted these exhibits without objection. Charles Malia and Mr. Ireland testified. After deliberations, Commissioner Reed made a motion as stated by AAG, Guay that in regards to the applicability of Chapter 19, Section 3 the appeal was properly before the commission because the party filing the appeal was not a driver. Commissioner McFarland seconded. Vote 4-0.

Commissioners also discussed the review of the race. Commissioner Duncan made a motion that the appeal before the Commission is denied because although there was a finding that the horse went inside the pylons it did not gain an unfair advantage or the action did not help to improve the horse. Commissioner Reed seconded. Vote 4-0.

**4. Review of the Maine State Harness Racing Commission under the Government Evaluation Act**

Title 3, Chapter 35, of the Maine Revised Statutes provides for periodic review of state agencies, Boards and Commissions. The Joint Standing Committee on Agriculture, Conservation and Forestry has notified the Maine State Harness Racing Commission that it is the subject of such a review and a report detailing the elements prescribed by Title 3,

Chapter 35 is due by November 1, 2015. The Commission will review the requirements of the report and may offer ideas and suggestions for inclusion. Mr. Jennings gave a brief overview of the report to the Commission. Commissioner Dresser stated that the report does need to be updated now that we have to casinos. Don Marean stated that he is concerned that the committee could have a lot of questions when they take it up in February. AAG, Guay stated to the Commission that the only thing they need to be cautious about is prejudging any cases that could come before them.

**5. Other Business**

Commissioner Dresser stated that they need to vote on the approval of the minutes for April 16, 2015. Commissioner Reed made a motion to approve the minutes of April 16, 2015 as presented. Commissioner McFarland seconded. Vote 4-0.

**6. Public Comment**

Commissioner Dresser asked for public comment. Don Marean addressed the commission on behalf of the Maine Breeders Association and their membership, the Maine Harness Horsemen's Association and their membership. They would like to extend their gratitude for your hard work. In 2007, the industry allowed legislation to take place that funds the commission totally because they had a crisis where they were about to lose \$400,000 which would have put the commission and the testing program on its knees. So, in 2007 the industry got together and made a proposal to the Ag Committee first that they were willing, every segment of the industry, the off-track betting, commercial tracks, the breeders, the fairs and the horsemen's purse account to give up a certain percentage of their money from the casino and Bangor to fund this commission. The industry needed this in order to fund the testing program. They agreed to fund the commission on an annual basis. No one ever argued on any amount of money this commission needed to do its work. The industry stands behind you. The integrity of this industry is at stake.

Diann Perkins addressed the commission regarding the 2 and 3 year old finals. The finals would be held at Scarborough. The draw for the consolation races would be held in Bangor.

**7. Schedule of Future Meetings**

October 28, November 4 and November 18, 2015

**8. Adjourn**

6:10 p.m.